

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEANETTE G. GREENE,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-07-3137
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

ORDER

Petitioner Greene's application for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 4).

Background

According to her petition, Greene was convicted of arson on April 8, 2002 in the 184th District Court for Harris County, Texas and sentenced to 25 years in prison. The First Court of Appeals for Houston affirmed her conviction on January 24, 2003. She alleges her petition for discretionary review was denied in August 2004.¹ Greene allegedly filed a state court application for writ of habeas corpus on August 12, 2005, which was denied in

¹ The Texas Court of Criminal Appeals website indicates final disposition of her PDR by refusal on June 3, 2004.

September 2005.² Greene filed this federal petition for writ of habeas corpus on September 26, 2007.

Analysis

This case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under the AEDPA, a petition for habeas relief filed by a person in state custody is subject to a one-year period of limitations which runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

Assuming that Greene filed a state application for writ of habeas corpus prior to expiration of her federal statute of limitations, and assuming tolling during the entire time her state application was pending, her federal application is untimely. Greene represents that

² The Texas Court of Criminal Appeals website does not reflect filing of any state writ application.

the state court denied her application for writ of habeas corpus in September 2005. She did not file her federal petition until two years later, in September 2007. Greene's petition presents no facts that suggest grounds for equitable tolling of the limitations period.

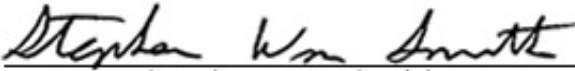
Conclusion

It appears from the face of the petition that Greene's petition is time-barred and thus is subject to summary dismissal for failure to state a claim. *Jones v. Bock*, 127 S. Ct. 910, 920-21 (2007). Greene will be given a fair opportunity to show why the limitation period has not expired. *See Day v. McDonough*, 126 S. Ct. 1675, 1684 (2006). It is therefore

ORDERED that Greene shall have 30 days from the date of this order to file a brief explaining why her case is not time-barred. After the expiration of 30 days, this court will issue a recommendation for denial of the petition by the district court, or order a response from the government, as appropriate. It is further

ORDERED that Greene's motion to proceed in forma pauperis (Dkt. 2) is granted.

Signed at Houston, Texas on October 26, 2007.


Stephen Wm Smith
United States Magistrate Judge